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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO  
ANY FORM OF DETENTION OR IMPRISONMENT

Working Group on Arbitrary Detention

Visit to Bhutan

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### Introduction

1. The Working Group on Arbitrary Detention, represented by its Chairman-Rapporteur, Mr. L. Joinet, and by two of its members, Mr. L. Kama and Mr. K. Sibal, visited Bhutan from 17 to 22 October 1994. The visit was pursuant to an invitation by the Royal Government of Bhutan, contained in a letter dated 8 August 1994 from the Permanent Representative of the Kingdom of Bhutan to the United Nations Office at Geneva addressed to the Working Group's Chairman-Rapporteur. By that letter, the Working Group was invited to visit Bhutan "in connection with the alleged case of arbitrary detention which is presently being considered by the Working Group". The reference is to the case of Tek Nath Rizal, submitted by the Working Group to the Bhutanese Government on 14 October 1991, which has been the subject of a lengthy correspondence and exchange of information between the Government and the Working Group and regarding which the Working Group has not yet adopted a decision. While it was clear that the Working Group, in the course of its visit to Bhutan, would examine the above-mentioned case, it was also obvious that the scope of the visit would not be limited to one particular case, but would concern other problems pertaining to the Working Group's mandate. The Government of the Kingdom of Bhutan promised the Working Group, and indeed extended to it, its full cooperation in facilitating its mission to the country.
2. During its visit to Bhutan, the Working Group stayed in the region of the capital, Thimphu. It was granted two audiences with H.M. King Jigme Singye Wangchuck. It was received by, and held talks with the Foreign Minister, Lyonpo Dawa Tsering; the Home Minister, Lyonpo Dago Tshering; the Minister of Trade and Industry, Lyonpo Om Pradhan; the Chief Justice, Dasho Sonam Tobgye; the Speaker of the National Assembly, Dasho Pasang Dorji; the Chairman of the Royal Advisory Council, Dasho Karma Letho, accompanied by the other members of the Council; the Chief of the Royal Army and Police, Goongloen Gom (Lieutenant General) Lam Dorji; and the Chief of the Royal Bhutan Police, Colonel Tandin Dorji, accompanied by the Chief of the Special Branch in the Royal Bhutan Police, Major Kipchu Mangyal.
3. In addition to the above-mentioned discussions, the Working Group visited the two principal prison or detention facilities in the Thimphu district: the Thimphu Detention Centre and the Chamgang Central Jail. In both facilities the Working Group was able to interview freely and privately as many detainees as it wished.
4. The Working Group also held informal meetings with a number of representatives of international non-governmental organizations dealing with technical assistance, as well as several United Nations agencies operating in the country, who briefed the Working Group about their experience in the country.
5. The Working Group would like to express its gratitude to the authorities of the Kingdom of Bhutan for the help and cooperation extended to its members during their visit to the country.

# I. THE INSTITUTIONAL FRAMEWORK OF THE KINGDOM OF BHUTAN

6. The monarchy, which has become hereditary, was instituted in 1907 in an original way since the first monarch, Ugyen Wangchuck, was elected by an assembly composed of representatives of the monastic community, public officials and ordinary citizens.

7. The regime, which never adopted a constitution, has embarked on a process of institutional modernization illustrated by a number of initiatives aimed at promoting democratization: establishment of a Parliament and a Royal Advisory Council, and renunciation by H.M. King Jigme Singye Wangchuck of his right of veto.

## A. Royal power

8. The King, as head of State, is vested with supreme power (head of the Government, supreme judge in the sense that anyone can have recourse to him to contest a High Court decision). For most important decisions he is, directly or indirectly, the ultimate authority, but he endeavours to form a consensus with a Parliament that favours modernization, while showing extreme caution, and the Royal Advisory Council, which does not hesitate to make its reservations known, in particular when the King exercises his prerogative to grant pardon or amnesty.

## B. The executive branch

9. The King chooses and appoints the ministers and is head of a Government comprising eight members with the following portfolios: agriculture, communications, education and health, finance, foreign affairs, home affairs, industry and trade, and planning.

10. Local administration is organized into 20 districts, each headed by a district chief appointed by the King and directly responsible to the Ministry of Home Affairs. The army and police depend not on a minister but on the officer in command of the Bhutan Royal Army, who is accountable only to the King and who is seconded by two high officials - the chief of the royal police and the chief of the royal guard, a body which is separate from the army and police.

## C. The Royal Advisory Council

11. This recent institution is always in session. It is made up of 10 prominent persons, 2 being chosen by the King while the 8 others, including 2 monks elected by the State clergy, are appointed by the National Assembly. Their term of office is five years. Council members are eligible for re-election only after expiry of the subsequent term of office. The Council advises the King in all areas, at his request or on its own initiative, and also has the task of making sure that decisions passed by the National Assembly are properly carried out.

D. The legislative branch

12. The National Assembly, created in 1953, is made up of 152 members as follows:

105 members are elected for 3 years by the voters of the 20 districts;

37 members are nominated by the Government from among the ministers, royal counsellors, high officials and heads or former heads of districts;

10 members are monks nominated by the State clergy.

13. The National Assembly holds one or two sessions per year, the date and length of a session depending on the importance of the subjects to be dealt with. In an emergency, it can meet in special session.

E. The judicial system

14. The jurisdictional hierarchy is as follows:

(a) The village headman constitutes the basic court. He adjudicates alone, on the basis of equity, in less important disputes. Appeals can be made to the district court;

(b) There is a district court in each of the 20 districts. It is presided over by a magistrate appointed by the King and aided by assistants;

(c) The High Court consists of six judges, four appointed by the King and two elected by the National Assembly from among its members (or former members). It serves both as a court of appeal against district court decisions and as a special court for matters involving State security (terrorism, etc.). Proceedings are brought before the High Court by the Public Prosecutor's Office, which comes under the Ministry of Home Affairs.

F. The State clergy

15. There are some 3,400 monks paid by the State. In the 1950s the King launched an operation to buy up the wealthy estates, and in particular monastic land, for redistribution to needy peasants.

16. The State clergy is headed by the "Head Abbot", who is nominated, with the King's assent, by and from among the senior monks. He also has responsibility for an independent organ which looks after the interests of the State clergy.

II. DETAINEES OF NEPALESE ORIGIN

17. In the course of discussions with the Bhutanese authorities the Working Group was able to better understand what may be referred to as the "southern Bhutan problem", which owes its genesis to the presence of persons of Nepalese origin in Bhutan. The Government's position was that prior to 1950 the

Nepalese presence in Bhutan was confined to Samchi and the hills of Chirang. It was after that date that persons of Nepalese origin settled in areas in southern Bhutan. The first settlers, who were farmers, were given Bhutanese citizenship in 1958. In the 1960s, according to the Bhutanese, there was an influx of ethnic Nepalese who crossed illegally into Bhutan to work as contractual labourers. These people are considered by the authorities to be economic migrants. The Government felt that Bhutan, which had a small population and a favourable land-people ratio, abundant employment and business opportunities arising from rapid economic progress and expanding development programmes, became an economic haven for ethnic Nepalese facing population pressure and job scarcity in their own areas, i.e. territories contiguous to Bhutan's southern borders, the Duars region of West Bengal and Assam, and the neighbouring areas of Kalimpong, Darjeeling and Sikkim, all areas dominated by ethnic Nepalese, as well as persons coming from eastern Nepal. According to the Bhutanese authorities, the massive illegal immigration that took place after 1961 could not have been accomplished without the active connivance of the local population in southern Bhutan and the corruption of the local administration.

18. While the Working Group is not in a position - nor is it inclined - to opine on the merits of the situation now prevailing in southern Bhutan in relation to the legitimacy of the claims of persons of Nepalese origin, a historical perspective nevertheless leads to a better understanding of the problem and explains why under the Bhutan Citizenship Act, 1985, a person permanently domiciled in Bhutan on or before 31 December 1958 and whose name is registered in the census register maintained by the Ministry of Home Affairs is deemed to be a citizen of Bhutan by registration. The Act is designed to exclude all Nepalese who allegedly illegally entered Bhutan in the early 1960s. The Group takes note of the fact that the refugee camps in Nepal consist of persons of Nepalese origin who allege that they are being denied their legitimate right to settle in Bhutan. The Bhutanese authorities, on the other hand, claim that the number of refugees has been rising since 1991, when there were only 300, to nearly 100,000. The refugees further allege that they were forcibly evicted from Bhutan. The Working Group believes that the Bhutanese and the Nepalese Governments are seeking to resolve the issue of the origin of the persons in the refugee camps bilaterally and hope to reach a settlement in the near future.

19. The above historical perspective is also necessary to appreciate the context in which persons of Nepalese origin have been detained in Bhutan. The Bhutanese authorities claim that the genesis of terrorism in southern Bhutan is the result of instability wantonly created by persons of Nepalese origin. Owing to inadequate protection, the Bhutanese residing in southern Bhutan are exposed to acts of violence. A summary of terrorist activity as of 17 October 1994 was given to the Working Group by the Royal Government of Bhutan and is attached as annex I. This reflects the official Bhutanese position and seeks to explain the reason for the detention and trial, under the National Security Act, 1992, of various persons of Nepalese origin for acts of violence.

III. VISITS TO DETENTION PLACES AND SUGGESTIONS MADE BY THE  
WORKING GROUP TO THE BHUTANESE AUTHORITIES

20. The Working Group visited Thimphu Detention Centre and Chamgang Central Jail in connection with allegations of politically motivated prosecutions. In this regard, the Working Group wishes to express its appreciation for the spirit of openness and transparency demonstrated by the authorities in allowing the members of the Working Group to interview freely detainees of all categories. At the Thimphu Detention Centre the detainees could be divided into three categories: those who are being prosecuted under the National Security Act, 1992; those who are being prosecuted for common law offences; and those against whom there is a pending monetary claim. Chamgang Central Jail held no common law criminals. In the jail there were 148 prisoners of whom 36 had been convicted under the National Security Act, 1992; 51 were charged with having committed offences under the Act and the other 61 were awaiting commencement of proceedings against them under the Act.

21. In the course of its interviews at Chamgang Central Jail the Working Group found that in many instances persons had been detained for years without having been charged and persons who had been charged had not been brought before a judge for trial. In most instances, those charged did not know when they might be tried.

22. After the visit of the Working Group to the Thimphu Detention Centre and the Chamgang Central Jail, a series of meetings were held with the authorities, including an audience with His Majesty, at which the Group candidly conveyed its concerns in respect of several matters relating not only to the cases of detained individuals, but also its apprehension that an inadequate number of judges might result in those charged under the National Security Act, 1992, languishing in jail for years without being brought to trial. Instances of prisoners accused of offences under common law who had been detained for years without having been tried or brought before a judge at regular intervals were also brought to the notice of the authorities. The Group expressed surprise at finding persons involved in purely monetary claims treated as common criminals. It also noted the complete absence of a legal community, the existence of which is necessary for the functioning of any legal system. In this context the Group observed that the institution of "Jabmi", a substitute for a lawyer, was not sufficiently entrenched and institutionalized to enable the accused to use them to advantage. The Group also commented on the fact that the accused were not being brought regularly before a judge.

23. Taking note of the above and of the fact that Bhutan is in the process of developing a legal system to meet the challenges of the modern era, the Working Group presented an informal memorandum to the authorities. Of the suggestions made, the Government of Bhutan agreed to consider the following:

(a) A review should be conducted by an independent body, constituted by the Government, of all cases of persons detained under the National Security Act, 1992, in order to determine that those who are not terrorists and against whom there is no evidence should not be either formally charged or tried;

(b) After the review is conducted and the innocent persons identified, those prisoners against whom substantial evidence exists should be formally charged within a specific time-limit;

(c) All those formally charged under the National Security Act, 1992, should be tried within a specific time-limit;

(d) The prison authorities must ensure that all persons being tried are aware of the institution of the Jabmi and are represented by a Jabmi of their choice;

(e) All detainees and common law prisoners should be regularly produced before a judge, in order that the legality of the detention may be confirmed, and given the assistance of Jabmis;

(f) Those common law prisoners who have been detained for years without having been brought before a judge and who have not been formally charged should also have their cases reviewed by an appropriately constituted body to consider whether it is at all necessary to prosecute them;

(g) Those who have been detained for years without having been formally charged or produced before a judge should be entitled to be released on bail and the conditions of bail should relate closely to their economic condition;

(h) All accused against whom there is a claim for money should not be prosecuted and should be released forthwith;

(i) The Code of Criminal Procedure should be suitably amended to bring it in conformity with the code in neighbouring countries having a similar judicial system;

(j) Every accused should be produced before a magistrate within 24 hours;

(k) The law should provide that every accused should be physically produced before a judge periodically;

(l) A complete list of all occupants of Thimphu Detention Centre and Chemgang Central Jail at the time of the visit of the Working Group should be prepared indicating the following information:

- (i) Name of prisoner;
- (ii) Date of arrest;
- (iii) Date when first produced before the magistrate;
- (iv) How many times thereafter, was he produced before the magistrate, giving dates;
- (v) Date when he was formally charged;

- (vi) Date when the trial began;
- (vii) Was he defended by a Jabmi or did he defend himself;
- (viii) Date of conviction;

(m) All the above suggestions should be applied as appropriate to all prisoners in all jails within Bhutan.

#### IV. RESPONSE OF THE ROYAL GOVERNMENT OF BHUTAN

24. It is significant to note that the Home Minister of the Royal Government of Bhutan in his letter of 2 November 1994 to the Working Group stated that the Government had already taken steps to deal with the detention of three persons, Bukkay Kami, Tomba Yairpok and Krishna Rasaily, whose detention was brought to the notice of the appropriate authorities. Regarding the situation relating to detainees under the National Security Act, 1992, the Minister stated the following:

##### "Anti-national Detention:

- (i) As you are aware there are 51 anti-national cases filed before the High Court and 61 detainees are still under detention awaiting appearance before the court. The High Court also has a staggering number of common law cases which it has to process.
- (ii) I am now happy to inform you that the matter was brought to the attention of the Lhengyel Shungtshog (Cabinet), on the instruction of His Majesty the King, by the Chief Justice of the High Court on 31 October 1994. Under the chairmanship of His Majesty the King, the Cabinet has been pleased to decide that anti-national cases should receive priority and as many cases as possible should be expedited. The Chief Justice apprised the Cabinet that all existing common law cases registered in the High Court would have to be on recess and registration of new cases would have to be suspended if the anti-national cases are to be expedited. The Chief Justice also apprised the Cabinet that suspending cases that have already been registered in the High Court and not accepting new cases is in contravention of the Thrimshung Chenpo (the Law of the Land). His Majesty instructed the Chief Justice to set aside all common law cases for a period of six months and concentrate on expediting the trial of anti-national cases."

25. The contents of the letter clearly demonstrate the sincere efforts made by the Bhutanese authorities to remedy the situation of those being prosecuted under the National Security Act, 1992. The Working Group notes with appreciation the stated intention of the Royal Government of Bhutan to deal effectively with the issues that were brought to its notice. The Working Group further appreciates the gesture of the Royal Government of Bhutan in extending an invitation to the Group for a follow-up mission to note the progress on the implementation of the suggestions made by the Group during

its visit. This is due to the positive and constructive attitude of H.M. King Jigme Singye Wangchuck who expressed his desire to implement the suggestions of the Working Group within a set time-frame.

#### V. THE CASE OF TEK NATH RIZAL

26. As the visit of the Working Group came about in the context of the detention of Tek Nath Rizal, the Working Group interviewed him at Chamgang Central Jail, although he had already been connected by the High Court at Thimphu. The Group has now adopted a decision on this case (see annex II).

#### VI. GENERAL OBSERVATIONS

27. In the course of the discussions the Working Group held with the Royal Government of Bhutan, the Group was struck by the absence of lawyers. There is no law school in Bhutan and the judges do not have a law degree, as they are appointed from amongst members of the civil service. The Group also noted the absence of a commercial code and laws relating to the functioning of commercial enterprises. It is true that Bhutan has its own historical perspective on all such issues. Nevertheless, in its attempts at modernization the Government will, in the near future, be called upon to develop a legal response, however traditional, to the multifarious issues that it is bound to face. The Group will continue its dialogue with the Bhutanese authorities to help, whenever help is sought, in evolving a system of laws which does not adversely affect Bhutan's traditional values and culture. The Group strongly recommends that the assistance of the advisory services of the United Nations Centre for Human Rights be sought in this process.

#### VII. CONCLUSION

28. The Group hopes that the experience of its Bhutanese visit will be a precursor to visits to other countries where the Group hopes to achieve the same level of cooperation for the mutual benefit of the international community.

Annex I

(Updated as of 17 October 1994)

SUMMARY OF TERRORIST ACTIVITIES\*

1. Murder - 65 cases (cases confirmed by the police only. There are many unconfirmed murders of Bhutanese nationals kidnapped and executed in the anti-national terrorist camps across the borders)
2. Rape - 53 cases
3. Kidnapping - 241 (cases reported to the Royal Bhutan Police only)
4. Dacoity and robbery - 862 cases reported
5. Hijacking of vehicles - 61 (including two-wheeled vehicles)
6. Number of Bhutanese nationals who have been attacked and injured during terrorist raids on villages in southern Bhutan - 623
7. Anti-national terrorists killed in encounters with the southern Bhutanese village volunteers during terrorist attacks on villages in southern Bhutan - 10 terrorists
8. Number of anti-national terrorists apprehended by the southern Bhutanese village volunteers and handed over to the various police stations in southern Bhutan - 106 terrorists

Countless cases of harassment and extortion have taken place and a large number of people have been forcibly stripped of their Ghos and Kiras and the garments cut to pieces or burnt in public.

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\* Given to the Working Group by the Bhutanese authorities during the mission (see para. 19).

Arson and sabotage

|     |                                                             |   |                                                                                     |   |
|-----|-------------------------------------------------------------|---|-------------------------------------------------------------------------------------|---|
| 1.  | Destruction of Basic Health Units                           | - | 12 cases                                                                            |   |
| 2.  | Blasting and burning of police checkposts and outposts      | - | 12 (includes offices and living quarters)                                           |   |
| 3.  | Destruction of Customs Offices and post offices             | - | 4                                                                                   | " |
| 4.  | Destruction of Forest Range/Beat Offices                    | - | 21                                                                                  | " |
| 5.  | Burning and blasting of schools                             | - | 29                                                                                  | " |
| 6.  | Burning of Guest Houses                                     | - | 5                                                                                   | " |
| 7.  | Destruction of office blocks                                | - | 3                                                                                   | " |
| 8.  | Destruction of private houses by fire and use of explosives | - | 66 houses                                                                           |   |
| 9.  | Destruction and damaging of vehicles                        | - | 36 cases                                                                            |   |
| 10. | Vandalizing of Sub-Divisional Office                        | - | 2 (includes offices and living quarters)                                            |   |
| 11. | Number of bridges sabotaged                                 | - | 16                                                                                  |   |
| 12. | Destruction of civil wireless station                       | - | One wireless station blasted<br>One wireless set stolen<br>One wireless set damaged |   |
| 13. | Number of electric pylons destroyed                         | - | 17 (including eight transformers)                                                   |   |
| 14. | Attacks on stores of the Department of Roads                | - | 3 stores                                                                            |   |
| 15. | Destruction and damaging of Agricultural Extension Centres  | - | 5 centres                                                                           |   |
| 16. | Destruction and damaging of Veterinary Centres              | - | 4                                                                                   |   |
| 17. | Number of Rural Water Supply Schemes damaged                | - | 15 (water reservoir tanks, pipes and tap stands were either damaged or stolen)      |   |
| 18. | Attempted sabotage on factories                             | - | 7 attempts                                                                          |   |

The Taklai Irrigation Project, which was built at a cost of 48.86 million Ngultrum in 1979 with aid from international organizations had been severely damaged at several places and the useful materials have been stolen from the channel by the Ngolops in June-July 1992.

There have also been numerous cases of indiscriminate felling and destruction of valuable trees by the anti-nationals from government plantations all along the foothills of southern Bhutan and the loss incurred to the country has been estimated to be over 300 million Ngultrum.

Attacks on security forces

- |                                                                   |   |             |
|-------------------------------------------------------------------|---|-------------|
| 1. Ambush and attacks on security forces and government officials | - | 64 cases    |
| 2. Number of security forces injured                              | - | 6 officers  |
|                                                                   | - | 31 soldiers |

Looting of arms, ammunition and WFP rations

- |                                                                                                                                                       |   |                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------|
| 1. Large-scale looting and stealing of WFP rations from various schools in southern Bhutan, viz. rice, wheat, edible oil, fish, milk powder and salt. |   |                                  |
| 2. Widespread looting of books, stationery, equipment, furniture, etc. from schools in southern Bhutan.                                               |   |                                  |
| 3. Rifles                                                                                                                                             | - | 16 units (along with ammunition) |
| 4. Sten guns                                                                                                                                          | - | 5 "                              |
| 5. Explosives (gelatine)                                                                                                                              | - | 400 kgs (raided from stores)     |

It has also been confirmed that a total of 688 firearms have been taken outside the country by the anti-nationals from southern Bhutanese villagers.

Arms and explosives seized from the anti-national terrorists by the security forces

- |                                                                                      |   |             |
|--------------------------------------------------------------------------------------|---|-------------|
| 1. Assorted rifles and pistols captured from terrorists and anti-national supporters | - | 2 239 units |
| 2. Army hand grenades                                                                | - | 10 "        |
| 3. Steel pipe grenades                                                               | - | 94 "        |
| 4. Home-made bombs                                                                   | - | 110 "       |
| 5. Land-mines                                                                        | - | 29 "        |
| 6. Improvised cannons                                                                | - | 3 "         |

- |     |                     |   |             |
|-----|---------------------|---|-------------|
| 7.  | Gelatine explosives | - | 516 kgs     |
| 8.  | Detonators          | - | 6 385 units |
| 9.  | Safety fuses        | - | 905 feet    |
| 10. | Army 90 grenades    | - | 5 units     |

Numerous other items like binoculars, compasses, table clocks for making time bombs, delay switches, wires, batteries, various sizes of pipes for making bombs and improvised cannons, many bottles of insecticide and several assorted tools for making home-made guns were also seized.

Annex II

DECISION No. 48/1994 (BHUTAN)

Communication addressed to the Royal Government of Bhutan on 14 October 1991.

Concerning: Tek Nath Rizal on the one hand and the Kingdom of Bhutan on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.
3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:
  - I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or
  - II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or
  - III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.
4. In the light of the allegations made the Working Group welcomes the cooperation of the Royal Government of Bhutan. Apart from responding to the allegations made the Government of Bhutan has kept the Working Group informed of all relevant developments that took place in the case of Tek Nath Rizal culminating in the judgement rendered by the High Court at Thimphu, Bhutan on 6 November 1993. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case in question, taking into consideration all relevant material including the allegations made and the Government's reply.
5. According to the source Tek Nath Rizal was arrested in October/November 1989 for his alleged involvement in the writing and distribution of a booklet titled "Bhutan: We want Justice" which was critical

of a decree issued by the King in May 1989. For this Tek Nath Rizal, a former counsellor of the King and President of the Peoples Forum for Human Rights (PFHR), was charged with publishing seditious literature and indulging in anti-national activities. Apparently, the PFHR published the booklet referred to above.

6. In its reply dated 11 December 1991, the Government of Bhutan, although it did not deny the allegations, detailed the activities of Tek Nath Rizal which, according to the Government, were directed at inciting the people against the Government through a disinformation campaign and were further directed at damaging Bhutan's relations with a friendly neighbour, India. The reply went on to state that in April 1988, Tek Nath Rizal, a Royal Advisory Counsellor from Chirang district, attempted to create misunderstanding between the Government and the people by falsely reporting that the southern Bhutanese were on the verge of rebellion because of their resentment against the nationwide census which was then being carried out. At the same time, he was inciting the people of southern Bhutan by alleging that the Government was using the census as a pretext to expel as many southern Bhutanese as possible from the Kingdom, in order to confiscate their properties. Although this was a treasonable act, His Majesty showed clemency to Tek Nath Rizal and no legal action was taken against him apart from terminating him from service. Instead of being grateful for such leniency, Tek Nath Rizal emigrated to Nepal with his family and from there began to incite southern Bhutanese to rebel against the Government. With the help of disgruntled persons like the Gazmere brothers (Ratan and Jogen) and Sushil Pokhrel, and illegal immigrants who had settled in Bhutan, a massive disinformation campaign was launched to win the sympathy of human rights groups around the world.

7. According to the Government, these anti-national elements then spread malicious lies among the people of southern Bhutan alleging that the Government was discriminating against the southern Bhutanese of Nepalese descent and destroying their Hindu culture. They grossly distorted the reasons for the 1988 census and the policy of strengthening Bhutan's national identity. They unsuccessfully attempted to sow seeds of discord between the Government and the people of eastern Bhutan through baseless allegations that the Royal Government had been discriminating against the eastern Bhutanese.

8. Furthermore, the Government stated that in an attempt to create misunderstanding between the peoples of India and Bhutan, Tek Nath Rizal and others fed Indian newspapers with false accounts of Indian businessmen and labourers being harassed in Bhutan and of Hinduism being suppressed in Bhutan. Even the Government's ban of foreign television programmes in order to protect the Kingdom's unique culture was dubbed by these people as an anti-Indian move.

9. The Government further stated that while it was fortunate that the machinations of Tek Nath Rizal and others had not harmed Bhutan's traditionally good relations with India, they had nevertheless destabilized the Kingdom. Tek Nath Rizal and others not only succeeded in fanning communal passions but launched an extremely violent terrorist movement in Bhutan which forced the closure of schools, basic health units and other services, and brought all developmental activities to a halt.

10. For these allegedly treasonable activities, Tek Nath Rizal and others were extradited from Nepal in November 1989. The Government admitted in its reply that Tek Nath Rizal, along with others, was in police custody, but stated that he was being well looked after with full access to medical attention.

11. The Government's position was that the acts attributed to Tek Nath Rizal constituted serious offences under the Bhutanese Law of Treason. According to the Government, Tek Nath Rizal had not been tried in a court of law for the simple reason that offences committed by him might have attracted capital punishment, which is mandatory for all treasonable offences, and that it would be extremely difficult to pardon him once the judicial processes were carried out and he was convicted. The Government indicated that His Majesty may exercise his royal prerogative and grant amnesty, in the near future, to Tek Nath Rizal and others.

12. Subsequently, on 26 June 1991, the Working Group sought a clarification from the Government of Bhutan, when the source referred to a statement attributed to the Government that Tek Nath Rizal was to be brought to trial in connection with his anti-national activities. This statement was apparently at variance with the communication of 11 December 1991 and subsequent communications of the Government of Bhutan wherein it was suggested that Tek Nath Rizal was likely to be granted amnesty. The Government of Bhutan confirmed in its letter of 11 August 1992 that Tek Nath Rizal "will be undergoing a fair and impartial trial under Bhutanese law".

13. Tek Nath Rizal was ultimately tried for violating various articles under the National Security Act, 1992 and a judgement was rendered in his case by the High Court on 16 November 1993 in the terms of which he was sentenced to life imprisonment. A perusal of the judgement of the High Court, a copy of which was forwarded to the Working Group, shows that Tek Nath Rizal was tried for the following nine charges:

"1. Tek Nath Rizal violated the undertaking he had signed on 7 June 1988, in the presence of two High Court judges, that he would not indulge in any further activities harmful to the Tsa-Wa-Sum (King, Country, People) or participate in any gathering of more than three persons. Instead he absconded from the country and embarked on an all-out effort to incite rebellion against the Tsa-Wa-Sum (King, Country, People) in southern Bhutan, thus violating article 4 of the National Security Act, 1992.

"2. Tek Nath Rizal sought the help of political parties in Nepal and Nepalese political leaders in the Duars to overthrow the legitimate and established Government in Bhutan, thus violating article 6 of the National Security Act, 1992.

"3. Tek Nath Rizal, in order to gain the support of the Governments and political parties in Nepal and India, maligned the Royal Government and attempted to create misunderstandings between the Royal Government and the peoples and Governments of the two countries. He spread lies that

the Royal Government was persecuting Hindus and Indian nationals in Bhutan. He thus violated articles 8 and 9 of the National Security Act, 1992 and NA-1 of the Thrimshung Chhenpo.

"4. Tek Nath Rizal attempted to create misunderstandings between friendly donor countries and the Royal Government of Bhutan by accusing the Royal Government of misusing foreign assistance, thus violating articles 8 and 9 of the National Security Act, 1992.

"5. Tek Nath Rizal sought to sow communal discord between the northern and southern Bhutanese by writing and distributing booklets containing false and baseless allegations, thus violating NA-1 of the Thrimshung Chhenpo and article 8 of the National Security Act, 1992.

"6. Tek Nath Rizal, in his attempt to incite the southern Bhutanese people against the Tsa-Wa-Sum, personally wrote and distributed seditious literature which distorted government policies for strengthening Bhutan's unique national identity and the process of national integration. He thus violated articles 7 and 9 of the National Security Act, 1992.

"7. Tek Nath Rizal, from his base camp in Nepal, called other Ngolop Lhotshampas to at least three large meetings during which they conspired to subvert the Tsa-Wa-Sum and formulated the strategies for the rebellion which included recourse to full scale violence as the ultimate method. He thus violated articles 4, 6 and 7 of the National Security Act, 1992.

"8. Tek Nath Rizal instructed the members of his so-called executive committee and regional representatives to set up underground organizations in various parts of the country to direct subversive activities against the Tsa-Wa-Sum, thus violating article 4 of the National Security Act, 1992.

"9. Tek Nath Rizal organized the Ngolop absconders into six groups with selected group captains to launch the second phase of his movement which was to resort to violence and terrorism. The group captains appointed by him, most of whom are still at large, have been relentlessly carrying out terrorist activities against the Royal Government and the Lhotshampas to this day. He thus violated article 4 of the National Security Act, 1992."

14. The High Court held Tek Nath Rizal guilty of charges 2, 3, 5 and 7. Charges 1, 4, 6 and 9 were dismissed. Judgement on charge 8 was deferred until such time as the prosecution could produce key witnesses who had left the Kingdom.

15. The following sentence was imposed in respect of each of the charges for which Tek Nath Rizal was convicted:

"Rizal was sentenced to four years in prison on charge 2 for violating article 6 of the National Security Act, 1992. He admitted to

the charge of having sought the help of several political parties in Nepal and Nepalese political leaders in India to carry out anti-government activities.

"Rizal was sentenced to six years in prison on charge 3 for violating article 8 of the National Security Act, 1992. He admitted to the charge of attempting to create misunderstandings between Bhutan and the Governments and peoples of India and Nepal. Rizal admitted that he had written the booklet 'Bhutan Hamro Manav Adhikar Khoeye' with the help of Sushil Kumar Pokhrel in which he had accused the Royal Government of persecuting Hindus and Indian nationals in Bhutan.

"Rizal was sentenced to three years in prison on charge 5 for violating article 5 of the National Security Act, 1992. He admitted to having written the booklet 'Bhutan Hamro Manav Adhikar Khoeye' which contained falsehoods and baseless allegations aimed at sowing communal discord, not only between the northern and southern Bhutanese, but also between other ethnic communities of the Kingdom.

"Rizal was sentenced to life imprisonment on charge 7 for violating article 4 of the National Security Act, 1992. It was proved conclusively that he initiated, directed and carried out activities harmful to the Tsa-Wa-Sum."

16. Having noted the contents of the judgement rendered by the High Court it is clear that the source was not aware at the time of the communication of the various activities for which Tek Nath Rizal was arrested and ultimately tried. A perusal of the judgement also reveals that Tek Nath Rizal's trial lasted 10 months and was apparently just and impartial. The case was heard by the full bench of nine judges in open court with the public being permitted to attend the hearings. Rizal was given adequate time and opportunity to defend himself. Thirty-three hearings were held, and a total of 15 witnesses and a large number of documents were produced in court. All the 15 witnesses were southern Bhutanese of Nepalese origin, most of whom were erstwhile collaborators of Rizal who had come forward to give evidence against him. All evidence, written and spoken, was translated into Nepalese for the benefit of Rizal as required by the law.

17. It may also be noted that on 19 November 1993, His Majesty the King of Bhutan exercised his prerogative and issued a Royal Decree in the terms of which the prison sentences awarded to Tek Nath Rizal by the High Court were commuted and Tek Nath Rizal would be granted Royal Pardon and released from prison once the problem of refugees in camps in Nepal was amicably resolved between Bhutan and Nepal.

18. The Working Group believes that it cannot question the findings of the High Court in respect of the activities of Tek Nath Rizal which have been found to be proved. Sowing communal discord between the northern and southern Bhutanese and also between ethnic communities of the Kingdom of Bhutan is an offence under the National Security Act, 1992. It is also in evidence that Tek Nath Rizal organized meetings at Kakarbitta, Nepal and conspired with others to achieve his ends by violent and non-violent means for which purpose he authorized the collection of funds through threats or use of

force. The nature of the evidence leaves no manner of doubt that the arrest of Tek Nath Rizal cannot be said to be arbitrary and in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights. There is also nothing to suggest that the trial of Tek Nath Rizal was not fair and in derogation of acceptable international standards. Tek Nath Rizal was given an adequate opportunity to defend himself and the accepted rules of a fair trial were not violated.

19. In the light of the above the Working Group decides the following:

- The detention of Tek Nath Rizal is not held to be in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, and is therefore declared not to be arbitrary.

Adopted on 1 December 1994

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